



A ten-year ban on re-entering Switzerland was in breach of the Convention

In today's Chamber judgment in the case [Emre v. Switzerland \(n° 2\)](#) (application no. 5056/10), which is not final¹, the European Court of Human Rights held, by 5 votes to 2, that there had been:

A violation of Article 8 (right to respect for private and family life) taken in conjunction with Article 46 (binding force and execution of judgments) of the European Convention on Human Rights.

The case concerned a Turkish national's complaint about a ten-year exclusion order to which he was made subject by the Swiss authorities.

Principal facts

The applicant, Mr Emre, is a Turkish national who was born in 1980 and lives in Stuttgart (Germany). He arrived in Switzerland with his parents in 1986. After he had been convicted on several occasions for offences committed between 1994 and 2000 (causing bodily harm and grievous bodily harm, assault, theft, robbery, causing damage to property, handling stolen goods, issuing insults and threats, rioting, breaches of the weapons legislation and serious road traffic offences), the Neuchâtel Canton Aliens Office ordered his deportation in 2003 for an indefinite period. This decision was subsequently upheld by the Federal Court.

Mr Emre first applied to the Strasbourg Court in 2004, arguing that his deportation from Switzerland for an indefinite period had been in breach of Article 8 of the Convention (right to respect for private and family life). In a final judgment in August 2008 the Court held that there had been a violation of Article 8. Following that judgment, Mr Emre applied to the Federal Court in July 2009 seeking revision of its original judgment. The Federal Court granted the application and limited his exclusion from Swiss territory to ten years.

In September 2009 Mr Emre married a German national and obtained a German residence permit. He then applied unsuccessfully to have the deportation order lifted so that he could settle in Switzerland.

Complaints, procedure and composition of the Court

Relying on Article 8, Mr Emre complained of the decision of the Federal Court to prohibit him from re-entering Swiss territory for ten years. He also relied on Article 46, arguing that the Federal Court's decision to replace deportation for an indefinite period with a

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

fixed-term measure was not in keeping with the spirit of the Strasbourg Court's earlier judgment.

The application was lodged with the European Court of Human Rights on 11 January 2010.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *PRESIDENT*,
David Thór **Björgvinsson** (Iceland),
Dragoljub **Popović** (Serbia),
Giorgio **Malinverni** (Switzerland),
András **Sajó** (Hungary),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal), *JUDGES*,

and also Stanley **Naismith**, *SECTION REGISTRAR*.

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

With regard to admissibility, the Court ruled that the measure imposed by the Federal Court constituted a new fact which could give rise to a fresh violation of Article 8, and declared this complaint admissible.

The Court did not doubt that Mr Emre's deportation had been in accordance with the law and had pursued a legitimate aim (prevention of disorder and crime). However, it took the view that the Federal Court should have taken into consideration all the relevant factors in the case, as the Court had done in its first judgment (including the nature of the offences committed, some of which had come under the heading of juvenile delinquency, the severity of the penalties imposed, the length of time for which Mr Emre had been resident in Switzerland, the strength of his social, cultural and family ties with the host country and the destination country, his health problems, the fact that his conduct had changed for the better and, lastly, the final nature of the deportation order).

The Court concluded that the State did not appear to have struck a fair balance between the private interests at stake (those of Mr Emre and his family) and the public interests (public order and safety and the risk of further offences).

The Court held that the ban on re-entering Switzerland for ten years, which was a considerable period in an individual's life, could not be said to have been necessary in a democratic society. It held that, in order to implement the Court's judgment and remedy the violation of Article 8, the Federal Court should quite simply have lifted the deportation order against Mr Emre with immediate effect. It therefore held that there had been a violation of Article 8 taken in conjunction with Article 46.

[Other articles](#)

The Court declared inadmissible the complaint concerning an alleged violation of Article 6 (right to a fair trial) and rejected it accordingly.

[Article 41 \(just satisfaction\)](#)

The Court held unanimously that Switzerland was to pay Mr Emre 5,000 euros (EUR) in respect of pecuniary damage. The Court dismissed unanimously the remainder of Mr Emre's claim for just satisfaction.

Separate opinion

Judge Malinverni expressed a dissenting opinion, joined by Judge Björgvinsson. The opinion is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.